United Nations A/73/207

General Assembly

Distr.: General
20 July 2018

Original: English

Seventy-third session
Item 74 (a) of the provisional agenda*
Promotion and protection of human rights: implementation of human rights instruments

Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, submitted in accordance with General Assembly resolution 72/163.

* A/73/150.

** The present document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

18-12051 (E) 010818

Please recycle

Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

As the international community prepares to celebrate the seventieth anniversary of the Universal Declaration of Human Rights, the Special Rapporteur, in the present report, examines the achievements made on the road to realizing the absolute prohibition of torture and ill-treatment and reflects on the primary challenges facing its universal implementation today.

18-12051

I. Introduction

1. The year 2018 marks the seventieth anniversary of the 1948 Universal Declaration of Human Rights. In the Declaration, which arose in the aftermath of the Second World War, it is acknowledged that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" and that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

2. Epitomizing this new world order based on human rights and dignity, it is proclaimed in article 5 of the Declaration that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Thenceforth, there was to be an intransgressible barrier to torture and ill-treatment,[1] protecting all human beings, without exception or discrimination of any kind and regardless of jurisdiction, territory and nationality.

3. The universal and absolute prohibition of torture and ill-treatment reflects the recognition that such abuse dehumanizes not only its victims, but also its perpetrators and, ultimately, any society in which such practices are knowingly tolerated. Torture and ill-treatment inflict lasting trauma, cripple all bonds of humanity and seriously damage entire communities. In its resolution 3452 (XXX), the General Assembly rightly declared any act of torture or ill-treatment an offence to human dignity and "a denial of the purposes of the Charter of the United Nations" (annex, para. 2).

4. In view of the fundamental importance of the prohibition of torture and ill-treatment for the maintenance of international public order and based on broad stakeholder consultations, the Special Rapporteur, in the present report, takes stock of what has been achieved over the past seven decades in terms of making it a practical reality, examines some of the most serious challenges facing its universal implementation today and offers recommendations on how best to meet those challenges. To avoid any perception of contextual bias, references to individual State practice and related jurisprudence is made only in support of points of law and not points of fact.

II. Achievements

A. International normative framework

1. Recognition of the prohibition

5. Since the international community unequivocally condemned torture and ill-treatment in the Universal Declaration of Human Rights, the legally binding prohibition of such abuse has been codified in human rights treaties, including the International Covenant on Civil and Political Rights of 1966 (art. 7), the European Convention on Human Rights of 1950 (art. 3), the American Convention on Human Rights of 1969 (art. 5), the African Charter on Human and Peoples' Rights of 1981 (art. 5), the Arab Charter on Human Rights of 2004 (art. 8), the Convention on the Rights of the Child of 1989 (art. 37), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (art. 10) and the Convention on the Rights of Persons with Disabilities of 2006 (art. 15). It is also reaffirmed in the ASEAN Human Rights Declaration of 2012 (art. 14). The prohibition of torture and ill-treatment "at any time and in any place whatsoever" has also been authoritatively recognized to reflect a general principle of law, namely

[1] "Ill-treatment" refers to cruel, inhuman or degrading treatment or punishment other than torture.

"elementary considerations of humanity, even more exacting in peace than in war".[2] Under the Rome Statute of the International Criminal Court of 1998, the systematic or widespread practice of torture and other inhuman acts of a similar character constitute crimes against humanity (art. 7) and, where committed for reasons related to armed conflict, war crimes (art. 8). The prohibition of torture and other ill-treatment is unanimously recognized as a core principle of customary international law, and the prohibition of torture is also universally recognized as having attained peremptory status (jus cogens).

2. Definition of torture and ill-treatment

6. Significant progress has also been made in identifying the defining elements of torture and ill-treatment. Several international instruments contain express definitions of torture, most notably article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975, article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, article 2 of the Inter-American Convention to Prevent and Punish Torture of 1985 and article 7 (2) (e) of the Rome Statute of the International Criminal Court. Although those instruments do not define torture in identical terms and none precisely defines other forms of ill-treatment, they have provided a solid basis for the clarification of both concepts in international and national jurisprudence, State practice and soft law instruments, and also through civil society advocacy and academic writing.[3] As a result, largely coherent core concepts have emerged for both torture and ill-treatment based on elements that authoritatively delineate the prohibited conduct.

7. As a generic concept, torture denotes the intentional infliction of pain or suffering on a powerless person to achieve a particular purpose, whereas ill-treatment denotes any other cruel, inhuman or degrading treatment or punishment, which does not necessarily require the intentionality and purposefulness of the act or the powerlessness of the victim (A/72/178, para. 31, and E/CN.4/2006/6, paras. 38–41). While human rights treaties establish obligations exclusively for States and, therefore, define torture and ill-treatment as acts perpetrated with the involvement of State officials, no State involvement is required for finding torture or ill-treatment under international criminal or humanitarian law. Torture and ill-treatment can take an almost endless variety of forms that cannot be catalogued in an exhaustive manner, ranging from police violence, intimidation and humiliation to coercive interrogation, from denial of family contacts or medical treatment to the instrumentalization of drug withdrawal symptoms, and from inhuman or degrading detention conditions to prolonged arbitrary detention or abusive solitary confinement, to name a few (see, for example, A/72/178, paras. 46–47, and A/HRC/37/50, paras. 26–29). While the manifold manifestations of torture and ill-treatment may not always involve the same severity, intentionality and purposeful instrumentalization of pain or suffering, all involve violations of physical or mental integrity that are incompatible with human dignity.

3. Standard-setting for national implementation

8. The specific duties of States to implement the prohibition of torture and ill-treatment are set out in a number of international instruments, spearheaded by General Assembly resolution 3452 (XXX). Most importantly, under the Convention against

[2] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgments, I.C.J. Reports 1986* (p. 14), with reference to the *Corfu Channel* case *(United Kingdom of Great Britain and Northern Ireland v. Albania), I.C.J. Reports 1949* (p. 4).

[3] Office of the United Nations High Commissioner for Human Rights, "Interpretation of torture in the light of the practice and jurisprudence of international bodies", 2011.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to criminalize torture, investigate alleged violations and prosecute perpetrators, provide redress and rehabilitation to victims, and adopt a wide range of preventive measures. The Optional Protocol to the Convention, which entered into force in 2006, provides for monitoring, at the national and international levels, of the implementation of the Convention wherever persons may be deprived of their liberty.

9. In many regions of the world, a decisive contribution has been made by the constant and increasingly progressive jurisprudence of international human rights mechanisms and criminal tribunals, but also by regional treaties focused on giving effect to the prohibition, such as the Inter-American Convention to Prevent and Punish Torture of 1987 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, and by a wide range of soft law instruments, such as: the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules); the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Principles of Medical Ethics Relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment; the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); the Minnesota Protocol on the Investigation of Potentially Unlawful Death; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules); the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) and the European Prison Rules.

B. International institutional framework

10. Since 1948, an impressive institutional framework has been established specifically to prevent torture and ill-treatment. In addition to the judicial and quasi-judicial treaty bodies that oversee the implementation of the general human rights instruments and the international criminal courts and tribunals that adjudicate a broad range of crimes, some international mechanisms focus on the prohibition of torture and ill-treatment.

11. The Committee against Torture, which is made up of independent experts, monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by reviewing the reports of States parties, hearing individual complaints and carrying out inquiries. The Committee also publishes its interpretation of specific treaty provisions in the form of general comments.

12. Under the Optional Protocol to the Convention, the Committee is complemented by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee on Prevention of Torture). Each State party to the Optional Protocol is required to set up a national preventive mechanism (NPM). During official visits to States, the Subcommittee can access any place where persons may be deprived of their liberty. It also advises Governments on how to establish NPMs and ensure that they function effectively. According to the Optional Protocol, the mandate of NPMs includes regularly examining the treatment of persons deprived of their liberty, making recommendations with a view to strengthening their

protection against torture and ill-treatment and making proposals with regard to draft and existing legislation (arts. 17–23).

13. Since its establishment in 1981, the United Nations Voluntary Fund for Victims of Torture has provided more than $180 million in aid through grants to more than 630 organizations worldwide.[4]

14. First appointed in 1985, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is mandated by the Human Rights Council to examine issues of torture and ill-treatment in all States Members and observer States of the United Nations, regardless of their treaty obligations. The mandate involves transmitting urgent appeals to States on behalf of individuals at risk of torture or ill-treatment and communications on allegations of past violations, undertaking fact-finding country visits and submitting thematic and activity reports to the Human Rights Council and the General Assembly.

15. The four anti-torture mechanisms are supported through the Office of the United Nations High Commissioner for Human Rights (OHCHR), which promotes and protects human rights, including the prohibition of torture and ill-treatment, through standard-setting, monitoring and implementation on the ground.

16. Outside the United Nations, the International Committee of the Red Cross (ICRC) operates worldwide as an impartial humanitarian organization to promote respect for international humanitarian law, including through visits to persons deprived of their liberty for reasons related to armed conflicts. The Geneva Conventions of 1949 oblige parties to international armed conflicts to provide ICRC with access to prisoners of war and other protected persons; under article 3 of the Conventions, States and non-State belligerents are encouraged to do the same in armed conflicts that are not of an international character.

17. Those universal bodies are complemented by monitoring and implementation mechanisms established through regional instruments.

18. In sum, since 1948, the international community has developed a wealth of normative standards and institutional mechanisms to make the universal and absolute prohibition of torture and ill-treatment a reality. Despite these remarkable achievements, however, the practice of torture and ill-treatment remains widespread around the world and public tolerance for them seems to be on the rise again. In the view of the Special Rapporteur, the situation can be traced primarily to shortcomings in national implementation, challenges to the prohibition of torture and ill-treatment, impunity and discrimination.

III. Challenges

A. Ratification of international instruments

19. The first step towards national implementation of the international framework is for States to adopt and ratify the relevant treaties. The decision to do so is not entirely at the discretion of individual States, given the reaffirmation of human rights and dignity contained in the Charter of the United Nations, the provision in the Universal Declaration of Human Rights that "everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized" (art. 28) and the peremptory character of the prohibition of torture and ill-treatment itself.

[4] See https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/BrochureUNVFVT.pdf.

20. Many States have adopted universal and regional anti-torture instruments over the past seven decades: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (164 States parties; 7 signatories); the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (88 States parties; 14 signatories); the International Covenant on Civil and Political Rights (171 States parties; 6 Signatories); the Geneva Conventions of 1949 (196 States parties) and their Additional Protocol I (174 States parties; 3 signatories) and Additional Protocol II (168 States parties; 3 signatories); and the Rome Statute of the International Criminal Court (123 States parties; 15 signatories).[5]

21. Despite this historically unprecedented commitment, further efforts are needed. States accounting for a sizeable portion of the world's population still have not, or not sufficiently, formalized their commitment by adopting, without reservation, treaties requiring the establishment of a normative, institutional and policy framework to effectively implement the prohibition of torture and ill-treatment.

B. National implementation

1. National legal framework

22. Beyond the formal recognition of their international legal obligations with regard to the prohibition and prevention of torture and ill-treatment, whether derived from treaty instruments, custom or general principles of law, States must also adopt legislative, regulatory, procedural and practical measures for their effective implementation throughout their jurisdiction, particularly in places of detention, but also in the context of law enforcement, the policing of assemblies, immigration control and active protection from various forms of interpersonal violence.

(a) Criminalization

23. In order to prevent torture and ill-treatment, such abuse must be adequately criminalized and effectively prosecutable under national law.[6] Unfortunately, many national criminal codes still do not recognize torture as a distinct offence, employ an excessively narrow definition of that crime, or fail to criminalize its perpetration by mere consent or acquiescence of a public official. In many cases, national legislation fails to provide for sanctions reflecting the gravity of torture, for the exercise of universal jurisdiction or for the removal of statutes of limitation or immunities in respect of torture and ill-treatment.

(b) Investigation, accountability and redress

24. The duty of States to investigate allegations of torture and ill-treatment and, in case of violations, to provide for accountability, reparation and rehabilitation,[7] is of fundamental importance with a view to ensuring justice, reconciliation and the rule of law, and preventing future violations. Nevertheless, many national legal systems still do not adequately guarantee those rights, and even establish legal obstacles to their implementation, such as limitation periods and immunities, or denial of legal standing for victims and their families in proceedings.

---

[5] As at 15 July 2018.

[6] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 2 and 4–7).

[7] Ibid. (arts. 12–14).

(c) Rehabilitation

25. In many States, specialized centres and services for the support and rehabilitation of victims of torture are scarce, difficult to access or non-existent. In spite of their obligations, most States provide no or only inadequate funding for such services. The United Nations Voluntary Fund for Victims of Torture requires annual contributions from States of at least $12 million, but that amount has not been reached once since 2003 (A/72/278, para. 26).[8]

(d) Preventive safeguards

26. The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention.[9] Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest. In many States, either such safeguards are not adequately guaranteed under the law or their effective implementation is hindered by delays, physical inaccessibility, a lack of medical staff, public defenders and interpreters, poor infrastructure and means of communication or transport, and the failure to provide for complaints procedures and protection against reprisals.

27. Significantly more needs to be done in many States to properly train and equip law enforcement and investigative personnel in order to ensure the use of non-coercive interviewing techniques (A/71/298) and avoid the excessive use of force in places of detention and in the broader context of law enforcement operations (A/72/178, para. 46).[10]

(e) New equipment and technologies

28. The use of new equipment and technologies can help to prevent torture and ill-treatment and hold its perpetrators accountable, for example by minimizing the use of force, enabling systematic video monitoring of investigative interviewing and replacing confession-based criminal investigations with improved forensic and other scientific processes. The emergence, however, of new types of weapons, equipment and technologies may also raise significant concerns about their possible misuse. States must therefore review and regulate the development, acquisition, trade in and use of new weapons, equipment and technologies in their national law. That includes a duty to determine whether the use of a new type of weapon, equipment or technology would, in some or all circumstances, violate the absolute prohibition of torture and ill-treatment (A/72/178, para. 59). International mechanisms should be encouraged to develop guidance to assist States in that regard. Specific attention should be paid to so-called less lethal weapons, including electric shock devices such as tasers and stun belts, which with growing frequency are used in an excessive manner and in inappropriate contexts, but also to the possible implications of increasingly automated, or even autonomous, technologies, particularly with regard to questions of accountability for harmful or coercive measures taken without meaningful human control.

---

[8] See also https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/BrochureUNVFVT.pdf.

[9] Richard Carver and Lisa Handley, eds., *Does Torture Prevention Work?* (Liverpool, United Kingdom, Liverpool University Press, 2016).

[10] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 10).

(f) Exclusionary rule

29. The prohibition of torture and ill-treatment cannot be effectively guaranteed as long as evidence obtained through such abuse is admitted, de jure or de facto, in any national proceedings.[11] Although the exclusionary rule is clear, many States fail to provide for the investigative, forensic and judicial procedures necessary to identify and exclude such evidence. Other States allow for the exclusion only of evidence extracted under torture, although the exclusionary rule also applies to other forms of ill-treatment.[12] Moreover, in some States, evidence may be deemed admissible when obtained by torture or ill-treatment in a third State without the complicity of the first State, although the exclusionary rule applies irrespective of such factors (A/HRC/25/60, paras. 23–30).

(g) Non-refoulement

30. States are under an absolute and non-derogable obligation not to remove, transfer or return any person to another State or territory where there are substantial grounds for believing that they would be in danger of being subjected to torture or ill-treatment.[13] While non-refoulement protection under refugee law is limited to persons entitled to refugee status and allows for exceptions based on considerations of national or public security, no limitation or exception whatsoever is permissible where removal, transfer or return would expose the person in question to a real risk of torture or ill-treatment. However, most national immigration procedures do not sufficiently distinguish between the general, absolute and unconditional prohibition of refoulement in cases where there is a real risk of torture or ill-treatment and the conditional refoulement protection provided under refugee law. A range of practices introduced by States as part of recent migration policies even point towards a deliberate erosion of good faith compliance with this cornerstone principle of international law (A/HRC/37/50, paras. 38–59).

(h) Non-State actors

31. Violence and abuse is increasingly being inflicted by a wide variety of private actors, including not only organized criminals and organized armed groups, but also corporate actors, private contractors or individual citizens acting at the instigation or with the consent or acquiescence of State officials. National legislation is often inadequate in that regard and governments frequently fail to prevent such violence, protect potential victims, particularly in the context of domestic, sexual and gender-based violence, or remove legal barriers to escaping such violence and prosecuting its perpetrators (A/HRC/31/57). Moreover, as the trend towards privatizing functions of the State continues, many States fail to adequately regulate such services or establish jurisdiction over extraterritorial violations committed by contractors and other non-State actors under their instruction and control, or to discharge their due diligence duties with regard to the extraterritorial acts of corporate actors established within their jurisdiction.

---

[11] Ibid. (art. 15).

[12] See Committee against Torture, general comment No. 2 (2008) on the implementation of article 2 by States parties (para. 6), and Human Rights Committee, general comment No. 32 (2007) on article 14: the right to equality before the courts and tribunals and to a fair trial (para. 41).

[13] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3).

2. National institutional framework

32. The effective national implementation of the prohibition of torture and ill-treatment requires a robust institutional framework for the application, oversight and enforcement of the relevant norms and standards.

(a) Criminal justice and complaints mechanisms

33. Effective and independent complaints and investigation mechanisms, including prosecutorial and judicial authorities able to adjudicate violations and prosecute and punish perpetrators, are vital. In practice, non-judicial complaints mechanisms often are the weakest link in the institutional framework. In many States, such mechanisms either do not exist or are insufficiently accessible to potential victims or jeopardized by a lack of structural or functional independence and impartiality. Where such mechanisms enjoy formal independence, they often depend on the same ministry as the service under review, resulting in conflicts of interest that gravely undermine their ability to operate as required. In many States, an alarmingly close relationship can be observed between prosecution services, the judiciary and the police, which severely undermines the separation of powers, judicial independence and the rule of law (A/HRC/13/39/Add.5, paras. 79, 146–151, 174–175 and 255). The resulting pervasive culture of impunity remains a significant challenge to the eradication of torture and ill-treatment throughout the world.

(b) Monitoring mechanisms

34. The regular and independent monitoring of places of detention by specifically mandated human rights bodies and humanitarian organizations is one of the most effective safeguards against torture and ill-treatment. Oversight and transparency are therefore vital and, despite many challenges in practice, an increasing number of States are accepting the idea of regular oversight of places of detention by international bodies such as the Subcommittee on Prevention of Torture and the special procedures of the Human Rights Council, and by national bodies and institutions, including NPMs, national human rights institutions (NHRIs) and civil society organizations. ICRC has an impressive record of regular visits to persons detained for reasons related to armed conflicts, although in non-international armed conflicts access depends on the willingness of all belligerents.

35. The ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by 88 States and the fact that NPMs established thereunder have the power to visit, at any time, any place of deprivation of liberty, including prisons, police stations, health-care settings, immigration detention centres, social-care homes, centres for children or homes for older persons, is a very positive development. To make NPMs truly effective, States must fulfil their obligations under the Optional Protocol and establish mechanisms that are formally and de facto independent from the authorities they monitor, adequately funded and competent to monitor all places of detention regularly and conduct private interviews with any persons deprived of their liberty.

(c) Broader human rights environment

36. Torture and ill-treatment are more likely to persist in a system that lacks a strong institutional human rights framework. Conversely, the presence of robust human rights institutions can help to prevent such abuse. In particular, provided with the necessary independence and funding, NHRIs can play a substantial role in ensuring the harmonization and implementation of national laws and practices relevant to the prohibition of torture and ill-treatment. More generally, a safe environment for civil

society organizations and human rights defenders contributes decisively to protecting human rights and, specifically, preventing torture and ill-treatment.

37. In many States, the broader human rights environment is inadequate or lacking in resources and support. In some cases, it has recently even come under threat through increasingly repressive policies and practices. In many parts of the world, human rights defenders face harassment, persecution and threats to their physical or mental integrity or livelihood by State and non-State actors. That situation is often not only tolerated but instigated or maintained as a matter of official State policy (A/70/217, paras. 35–77).

(d) Political will

38. Perhaps the most important barrier to the effective national implementation of the prohibition of torture and ill-treatment is the absence of the political will needed to shape government policy and change institutional cultures and processes with a view to making the prohibition a reality. Even the most exemplary national framework will remain ineffective if resources and support for it are lacking.

39. A genuine national commitment to eradicating torture and ill-treatment is incompatible with tolerance for corruption, organized crime and similar structural factors that create fertile ground for such abuse (CAT/C/52/2, paras. 72–100, and A/HRC/37/L.32). Indeed, a significant proportion of allegations of torture and ill-treatment received by the Special Rapporteur during country visits relate to abuse inflicted for the purpose of covering up crimes or boosting conviction statistics by coercing innocent persons to confess to offences they did not commit, or for the purpose of punishing or intimidating persons complaining about corruption schemes that lead to cruel, inhuman or degrading living conditions and treatment in places of detention or marginalized communities. Corruption further decisively affects the willingness of authorities to investigate and adjudicate allegations of torture and ill-treatment, or to provide for compensation and rehabilitation. The violent consequences of corruption are exacerbated where State officials collude with organized crime in contexts such as the trafficking or smuggling of persons, human organs, narcotics and other contraband.

40. High-level, official policies may, deliberately or inadvertently, create an environment conducive to the practice of torture and ill-treatment. That certainly is the case where violent political rhetoric directly encourages the use of coercive interrogation against suspected terrorists and other "enemies" of the State. In many States, tough policies on common criminality entail an overuse of incarceration that, in turn, leads to cruel, inhuman or degrading conditions of detention: overcrowded prisons lacking in funding and personnel and with high levels of violence perpetrated by prison staff and between inmates. Similarly, the widespread overuse of solitary confinement may in itself amount to a form of torture or ill-treatment and also increases the risk of additional abuse and the likelihood that violations will go unchallenged.

41. Lastly, an area in which national and transnational policies and practices have had substantial regressive implications for the prohibition of torture and ill-treatment is irregular migration.[14] Widespread deterrence-based, punitive and discriminatory policies undermine the prohibition of refoulement and push increasing numbers of migrants on to irregular routes and into the hands of smugglers and traffickers. Mandatory, prolonged or indefinite criminal or administrative detention, often in

[14] The term "irregular migrants" is used to refer to migrants failing to comply with the regular domestic immigration legislation of their current transit or destination State.

appalling conditions, exposes irregular migrants to substantial risks of torture or ill-treatment (A/HRC/37/50).

42. With regard to State authorities operating on the "front lines", such as law enforcement and security personnel, prison staff and immigration officials, misguided institutional cultures are often conducive to the spread of torture and ill-treatment. In far too many national law enforcement systems, torture and ill-treatment are not effectively discouraged, confessions continue to be favoured and investigative outcomes are rewarded irrespective of the method used to achieve them. Political pressure to deliver results, appraisal systems focused on the number of crimes "solved" or convictions secured, combined with a lack of resources for forensic support and of training in modern criminal investigation techniques, often lead to coercive interrogation being seen as a "shortcut" to delivering the expected results, despite substantial evidence of its ineffective and counterproductive nature (A/71/298, paras. 10–12 and 16–22). Conversely, a practice-oriented, systematic integration of the prohibition of torture and ill-treatment within policing culture not only significantly decreases the risk of excessive use of force and other forms of torture and ill-treatment, but also increases the population's trust and cooperation, making policing more effective and promoting the rule of law.

C. Direct challenges to the prohibition

1. Misinterpretation

43. Certain circumstances may give rise to genuine uncertainty regarding the precise scope of the prohibition of torture and ill-treatment. In case of uncertainty as to the permissibility of a particular act, omission or situation, the prohibition must be interpreted in good faith and in the light of its object and purpose as reflected, inter alia, in international jurisprudence and the standards and guidelines developed for its implementation. If doubt persists, States should always err on the side of caution, given that the act, omission or situation in question can be permissible only once its qualification as torture or ill-treatment has been affirmatively excluded. Particular interpretive caution is required in circumstances involving persons with specific vulnerabilities, which may increase the likelihood of the prohibition being breached.

44. Under legislation in some States, corporal punishment is still provided for and domestic violence and chastisement, in particular against women and children, are tolerated. That must be regarded as incompatible with a contemporary understanding of human dignity and, therefore, cannot be justified as "lawful sanctions" within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[15] Although the death penalty is not formally prohibited under international law, the wording of article 6 of the International Covenant on Civil and Political Rights and the adoption of its Second Optional Protocol clearly indicate an international commitment to work towards its abolition. It is the considered view of the Special Rapporteur that the circumstances accompanying the practice of the death penalty, including the "death row phenomenon", almost invariably inflict a degree of pain and suffering on convicts and their relatives, which cannot be reconciled with the prohibition of torture and ill-treatment and the underlying principle of human dignity (see A/67/279, paras. 42–51 and 78).

[15] See also Human Rights Committee, general comment No. 20 (1992) on article 7: prohibition of torture or other cruel, inhuman or degrading treatment or punishment (para. 5), and ICRC, *Customary International Humanitarian Law*, vol. I (Cambridge, United Kingdom, Cambridge University Press, 2009), rule 91.

45. Recently, States have even increasingly attempted to reinterpret certain coercive interrogation practices as not violating the prohibition of torture and ill-treatment, predominantly in the context of counter-terrorism and counter-insurgency (see A/71/298, para. 9, and A/59/324, paras. 14–16). Arguments are continually made for narrowing the definition of the prohibited conduct, for example by over-emphasizing the criterion of the "severity" of the pain and suffering inflicted and, in particular, by requiring that serious injury or long-term harm ensue before the action is considered to be in violation of the prohibition. That trend has been accompanied by the emergence of euphemistic terminology, such as "enhanced interrogation" or "pressure techniques", and by the increasing use of methods specifically designed to avoid leaving physical traces, such as stress positions, sleep deprivation, suffocation, hooding or blind-folding, and long-term exposure to physical discomfort, mental pressure and sensory destabilization.

46. In the view of the Special Rapporteur, it is difficult to envisage any realistic scenario of the intentional and purposeful infliction of pain and suffering on a powerless person that would not amount to torture. Without doubt, intentionally inflicting pain or suffering on a powerless person for purposes such as coercion, intimidation, punishment or discrimination always amounts to torture, irrespective of whether the intended pain or suffering is caused by a single method or the accumulation of multiple techniques and circumstances, and regardless of whether the pursued purpose is achieved instantaneously, only after repeated or prolonged exposure, or cannot be achieved at all due to the victim's resilience or other intervening circumstances. Moreover, it must be recalled that any cruel, inhuman or degrading treatment or punishment, regardless of whether it may be formally qualified as torture, is unlawful and cannot be justified under any circumstances.

2. Justification

47. Despite the absolute and non-derogable character of the prohibition, the idea persists that torture or ill-treatment can be justified in exceptional circumstances. Particularly in counter-terrorism, the use of coercive interrogation has been portrayed as a "necessary evil" to ensure public safety and national security, a narrative that has been widely replicated in TV series and other mainstream entertainment and which seems to have strongly influenced an increased public tolerance for torture. Most notably, based on the so-called "ticking bomb" scenario, it is argued that the duty of States to protect the lives of their inhabitants should take precedence over the protection of terrorist suspects against torture when coercive interrogation is perceived as being absolutely necessary to "extract" information required to locate and neutralize a bomb threatening many innocent lives.

48. Exceptionalist narratives such as the "ticking bomb" scenario are fundamentally flawed on several levels. First, from a practical perspective, interrogators can rarely be certain as to whether a suspect really possesses the required information and whether the alleged bomb exists or simply has been invented in order to spread terror, thus entailing a significant risk of error. Second, as a matter of logic, even when suspects possess the required information, they have little reason to tell the truth, as false information can equally interrupt the torture and cause interrogators to lose time verifying the information without being able to neutralize the presumed bomb. Third, from a policy perspective, to permit the use of torture even in the most exceptional circumstances necessarily requires the creation of a system, policy and culture of torture, with interrogators being "trained" accordingly. Experience shows that, once that process has taken place, torture and ill-treatment invariably become a pervasive practice that is impossible to control (see also A/HRC/13/39/Add.5, para. 56). Fourth, from a legal perspective, the "ticking bomb" narrative is based on the misleading rationale that torture should be permitted as a necessary means of last resort, whereby

its infliction must be regarded as proportionate in view of the gravity of the harm to be prevented by saving many lives. However, even if torture did work in such exceptional circumstances, it would still not be permissible under international law. While arguments of necessity, proportionality and lawful purpose may govern the permissibility of interference with qualified human rights, such as freedom of expression and, in extremis, even the right to life, they are legally incapable of justifying violations that are absolutely prohibited, such as torture, slavery and genocide. Fifth, from a global governance perspective, it must be stressed that abhorrent practices such as torture, slavery and genocide have been absolutely prohibited as a matter of universal jus cogens not because they never "work" in practice but because all of them irreparably destroy the humanity and integrity of the victims, the perpetrators and, ultimately, society as a whole. As this mandate stated shortly after the attacks of 11 September 2001, calling into question the prohibition of torture and other ill-treatment in the context of counter-terrorism amounts to "signalling to the terrorists that the values espoused by the international community are hollow and no more valid than the travesties of principle defended by the terrorists" (E/CN.4/2002/76).

49. In view of this fundamental challenge to the prohibition of torture and ill-treatment today, the Special Rapporteur appeals to States to remember that article 5 of the Universal Declaration of Human Rights was a reaction to the abhorrent policies and practices of the Second World War. It is profoundly shocking to contemplate that, as the last generations of survivors of that conflict disappear, so could the incontrovertible lessons drawn from the atrocities they witnessed, thus seriously endangering one of the greatest achievements in human history. In the view of the Special Rapporteur, to question the absolute character of the prohibition of torture and ill-treatment is not a legitimate enquiry of law or policy, but amounts to a short-sighted, self-destructive and irresponsible attack on the very foundations of the post-war new world order based on peace, justice and human dignity. Current world leaders bear the historical responsibility for how they choose to react to this fundamental challenge.

D. Impunity

1. State responsibility

50. In recent years, States have increasingly tended to avoid their international obligations by "delegating" the practice of torture and ill-treatment to other States or non-State actors or by knowingly tolerating or even benefiting from such practices by other States or non-State actors.

(a) Outsourcing

51. Many States increasingly outsource part of their traditional public services to private contractors, including military, intelligence and law enforcement functions. Outsourced activities can include, for example, the protection of specific persons, objects and infrastructure, the policing of assemblies, the transport and interrogation of suspects, and the management of facilities for migrants, of institutions for institutionalized care, and even of prisons and penitentiaries. Particularly where detention facilities are understaffed and under-resourced, there also has been a trend towards the de facto "delegation" of internal prison management to dominant groups of inmates.

52. This development generally has not been accompanied by sufficiently strong national regulation, oversight and accountability structures to control and enforce the compliance of corporate actors and other private contractors with human rights, thus

resulting in widespread impunity for violations (A/HRC/34/54, para. 47, and A/HRC/28/68, para. 52). Under international law, however, States cannot absolve themselves of their responsibility for torture and ill-treatment carried out on their behalf, under their direction or control, at their instigation or with their consent or acquiescence. States are obliged to take effective measures with a view to prohibiting and preventing torture and ill-treatment in all such circumstances and providing redress to the victims.[16]

(b) Extraordinary renditions

53. A particularly deplorable practice that has proliferated in the context of counter-terrorism involves transferring detainees without due process to another country or territory for interrogation under torture and ill-treatment. Many States have facilitated such "extraordinary renditions", including by allowing the use of their airspace and airports, or by hosting "black sites" where torture and ill-treatment occurred (A/HRC/13/42). Although the practice of renditions seems to have subsided significantly in recent years, the transparency, accountability, redress and reparations offered in respect of past practices remain grossly inadequate, with responsible officials being shielded from prosecution and investigations being plagued by a lack of independence, political will and other obstacles, thereby seriously undermining the prohibition of torture and ill-treatment.

(c) Arrival prevention, readmission agreements and diplomatic assurances

54. In the context of migration, States increasingly conclude cooperation agreements with other States or non-State actors aiming to circumvent the prohibition of *refoulement* through the externalization of borders and procedures, or through extraterritorial "pushback" and "pullback" operations. In particular, "pullbacks" are designed to physically prevent migrants from leaving a (retaining) State or territory, or to forcibly return them there, before they can reach the jurisdiction of their destination State. In addition to their direct impact on the rights and safety of migrants, such practices have also facilitated the almost uncontrolled spread of abuse by a wide variety of individuals, including corrupt State officials and organized criminals. It must be reiterated that any participation in, or instigation and support of, such operations may give rise to complicity in, or joint responsibility for, the resulting human rights violations, including torture and ill-treatment (A/HRC/37/50, paras. 8 and 59).

55. Many States also conclude readmission agreements with other States, by which migrants are expelled without an individualized risk assessment to States that have been found to be "safe" on the basis of generalized criteria. This practice is incompatible with the procedural requirements of the prohibition of refoulement and may well amount to collective expulsion (A/HRC/37/50, para. 46).

56. Lastly, there is a widespread State practice of expulsions carried out based on diplomatic assurances by the receiving State that the person in question will not be subjected to torture or ill-treatment. In practice, diplomatic assurances are sought from States that are reasonably believed to practice torture and ill-treatment and the sending State generally lacks genuine interest in discovering subsequent non-compliance by the receiving State. Even in conjunction with post-return monitoring mechanisms, therefore, diplomatic assurances are inherently incapable of providing sufficient protection against such abuse. The practice also expresses a disturbing complacency and acquiescence by the sending State with regard to merely selective

[16] Committee against Torture, general comment No. 2, para. 15.

compliance with the prohibition of torture and ill-treatment by the receiving State (A/HRC/37/50, paras. 47–50).

(d) Intelligence exchanges

57. Intelligence exchanges, particularly in the context of counter-terrorism, continue to undermine the prohibition. In many States, the use of information by intelligence services that may have been obtained by torture or ill-treatment in other countries is still not prohibited or has even been publicly condoned. Such intelligence exchanges have created a "market" for information obtained through torture and ill-treatment (A/HRC/25/60, paras. 37–38) and, in many cases, may well involve complicity in the perpetration of such abuse. Just as is the case for judicial and administrative proceedings, the gathering and exchange of intelligence are conducted to establish the basis for potentially significant decisions by State authorities and, therefore, trigger due diligence obligations with regard to the prevention of torture and ill-treatment (A/HRC/10/3, paras. 55–57). In the view of the Special Rapporteur, any good faith interpretation of the exclusionary rule in line with its object and purpose necessarily must entail its applicability not only to judicial and administrative proceedings, but also to intelligence and executive decisions of any kind (A/HRC/16/52, para. 56).

2. Individual accountability

58. The prohibition of torture and ill-treatment cannot be effectively implemented without individual accountability. Reliable investigation and prosecution mechanisms not only ensure sanctions and redress, but also have a deterrent effect against the occurrence of violations in the first place. In practice, however, the overwhelming majority of perpetrators are never held legally to account and, of those who are, few receive sanctions commensurate with the gravity of their crimes. Widespread failure to hold perpetrators, whether State officials or non-State actors, accountable creates a persistent environment of impunity conducive to torture and ill-treatment. Such shortcomings are often compounded by formal obstacles to individual accountability in national law, such as the application of statutes of limitation, blanket amnesties, immunities and other jurisdictional impediments. The Special Rapporteur is of the view that such obstacles are not compatible with the duty of States to ensure the effective prevention of torture and ill-treatment, the investigation of violations, the punishment of perpetrators and the provision of the required redress, reparation and rehabilitation for victims of such abuse.

3. Non-State actors

59. States often do not sufficiently protect individuals and populations against violence and abuse at the hands of non-State actors, such as organized armed groups, militias and criminal networks, but also corporate actors and private individuals. Where committed for reasons related to an armed conflict, or at the instigation or with the consent or acquiescence of State officials, such violence and abuse generally amount to torture and ill-treatment. Irrespective of the precise circumstances, however, States are legally obliged to take all reasonable measures to protect any individual or group within their jurisdiction exposed to violence and abuse, including gender-based, ethnic or any other discriminatory violence, harmful practices such as female genital mutilation and domestic violence and trafficking in human beings, especially of women and children. This can also entail a duty to retract or revise official policies which, deliberately or inadvertently, create an environment conducive to violence and abuse on the part of non-State actors, such as "tough" policies on irregular migration and petty crime, or complacency regarding domestic, xenophobic or homophobic violence (A/HRC/31/57 and A/HRC/37/50, paras. 30–37).

E. Discrimination

60. In practice, protection against torture and other ill-treatment is not guaranteed equally to everyone without discrimination. In particular, a substantial connection can be observed between social marginalization and other vulnerabilities, on the one hand, and an increased exposure to risks of torture and ill-treatment, on the other.

1. "Suspect" individuals and communities

61. Particularly in the context of counter-terrorism, organized crime and internal armed conflict, but more recently also in the context of irregular migration, there has been a rise in rhetoric, according to which certain persons or groups, owing to the threat they are perceived to represent or the crimes they are suspected of having committed, cannot or should not be granted human rights protections that may pose an obstacle to the protection of public security and "law and order". The identification of such "suspect" individuals or communities often occurs based on nothing more than varying combinations of criteria such as migration status, religion, gender, age, socioeconomic background and ethnic or racial factors, and entails a significant risk of discrimination and abuse, including torture and ill-treatment.

62. It is important to recall that protection from torture and ill-treatment is not a reward for personal conduct or a privilege tied to nationality, status or similar attribute, but is a right that is inherent in every person's humanity and cannot be lost, diminished or lawfully interfered with under any circumstances whatsoever. Discriminatory policies of stigmatization, demonization and prejudice against particular communities or individuals tend to create "black holes" of legal protection and are almost invariably accompanied by increasing tolerance of and widespread impunity for torture and ill-treatment.

2. Marginalization and vulnerability

63. Increased risks of torture or ill-treatment can also arise in other circumstances of vulnerability, usually marked by factors such as power asymmetry, structural inequalities, ethnic divides and socioeconomic and sociocultural marginalization. The growing awareness of those issues has resulted in multiple national and international normative and policy initiatives, including in the framework of the 2030 Agenda for Sustainable Development, but significant efforts remain necessary to remedy the negative consequences of discrimination and marginalization worldwide.

(a) Vulnerability

64. Vulnerability to torture and other ill-treatment arises through a combination of factors, many of which may be inherent in the social, political and legal system. Conceptually, it can be understood as a degree of disempowerment relative to the prevailing environment and circumstances, entailing diminished independence and capacity for self-sustenance, self-protection or self-preservation and, conversely, an increased exposure to risks of injury, abuse or other harm. Vulnerabilities can be influenced, caused, exacerbated or alleviated by combinations of a wide variety of personal or environmental factors, such as age, gender, health, substance dependence, sexual orientation, migration status and socioeconomic, cultural or indigenous background (E/CN.4/1988/17, paras. 55–56; A/63/175, paras. 38–41; and A/HRC/31/57, paras. 9 and 57). Individuals or groups are particularly vulnerable to torture and ill-treatment in environments that are obstructive or oppressive for them and where legal, structural and socioeconomic conditions may create, perpetuate or exacerbate their marginalization. Therefore, States are under a heightened obligation to protect vulnerable persons from abuse and should interpret the torture protection

framework against the background of other human rights norms, such as those developed to eliminate racial discrimination and discrimination and violence against women, and those designed to protect the rights of children and persons with disabilities.[17]

(b) Socioeconomic marginalization

65. Socioeconomic marginalization is an important factor exposing persons to abuse by States and non-State actors. Torture, ill-treatment, arbitrary detention and inhuman or degrading conditions of detention are most likely to be inflicted on persons belonging to the poorest and most disadvantaged sectors of society. Persons living in poverty and those experiencing homelessness or living in illegal settlements often lack access to basic necessities and public services, such as water, food, hygiene and health care, and are legally or de facto disenfranchised. Such marginalization and disempowerment foster the irregular generation of income for life sustenance, often through petty criminality. At the same time, tough penal policies and excessive recourse to incarceration give rise to a vicious cycle of violence and incarceration that expose the most marginalized to an almost inescapable downward spiral of brutalization. Socioeconomically marginalized persons are also most likely to be "scapegoated" by State officials, including by being coerced into confessing to crimes they have not committed, or abused by organized criminals and other non-State actors. Police are often slow to protect the poor against such violence, or may even demand "protection money" in return. To make matters worse, the stigma and marginalization faced by those in poverty often mean that their complaints of ill-treatment are taken less seriously (A/72/502, paras. 9–12, and A/HRC/28/68/Add.3).

(c) Persons deprived of their liberty

66. Places of detention are particularly disempowering environments that combine power asymmetry, stigmatization and discrimination with other forms of vulnerability. Persons deprived of their liberty are often wrongly seen as outcasts not deserving of sympathy, resources or protection, which leaves them exposed to a heightened risk of torture and ill-treatment (A/HRC/13/39/Add.5, paras. 237 and 257). Those risks are greatest during apprehension and the early stages of custody, in incommunicado detention and, more generally, under policies of over-incarceration (A/71/298, paras. 8 and 45). The risks and marginalization associated with detention are further exacerbated in the case of persons with particular vulnerabilities.

(d) Health-care settings

67. Health-care settings are an example of a particular context in which substantial and complex risks of torture and ill-treatment materialize in interaction with other characteristics and structural or situational factors. It has been observed that, with regard to ensuring free and informed consent to health-care treatment, the power imbalance between doctors and patients, exacerbated by stigma and discrimination, results in individuals from certain groups of patients being disproportionately vulnerable to having informed consent compromised. The risk is particularly high in the context of forced institutionalization and treatment of persons with psychosocial disabilities, who are often stripped of their legal capacity and not, or only inadequately, involved in decisions taken with regard to their treatment (A/HRC/22/53).

[17] Committee against Torture, general comment No. 2 (para. 21).

(e) Children

68. Children naturally experience greater vulnerability than adults, owing to their stage of development and limited capacity to escape or react to abuse emanating from their environment. That vulnerability is compounded in legal systems that allow or tolerate domestic violence, sexual abuse, child marriage and child labour and is particularly exacerbated in the case of children who are forcibly institutionalized in prisons, juvenile detention centres, orphanages or medical institutions. That children deprived of their liberty are at a heightened risk of depression, anxiety or other psychological trauma and more prone than others to suicide and self-harm has been well documented. Even short periods in detention can substantially undermine the well-being and cognitive development of children. It is therefore of the utmost importance that children not be deprived of their liberty, except as a measure of last resort and in compliance with the principle of the best interests of the child (A/HRC/28/68).

(f) Women and girls

69. Women and girls often face a heightened exposure to violence and sexual abuse, not only when deprived of their liberty but also in various extra-custodial contexts. That vulnerability is particularly pronounced in legal systems that foster or tolerate the discrimination, oppression and exploitation of women and girls, including through child marriage, forced marriage, marital rape and chastisement, where women's rights to property, divorce or inheritance are restricted, or where they are prevented from obtaining custody of their children or from leaving violent situations (A/HRC/7/3, para. 46, and A/HRC/31/57).

(g) Lesbian, gay, bisexual, transgender and intersex persons

70. Throughout the world, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons face a substantial risk of torture and ill-treatment, including sexual abuse and humiliation. That vulnerability is particularly pronounced in States in which persons are criminalized, stigmatized, persecuted or harassed for their actual or perceived sex, gender identity or expression, sexual orientation or non-adherence to dominant social norms regarding gender and sexuality (A/HRC/31/57, para. 15, and A/HRC/19/41).

(h) Older persons

71. Persons approaching the end of natural life expectancy tend to become more dependent and vulnerable, particularly when deprived of their liberty or accommodated in institutionalized care. The general vulnerability of older persons is often exacerbated by systemic and structural barriers to their enjoyment of human rights, including disability-related discrimination, ageism, neglect and disregard. Only a few States provide complaints mechanisms that are accessible to persons with limited communication abilities, [18] or supported decision-making for persons requiring assistance in exercising their legal capacity (E/2012/51, para. 21). In the view of the Special Rapporteur, therefore, older persons' particular experiences of vulnerability and their consequent exposure to a heightened risk of torture and ill-treatment deserve broader attention.

(i) Persons with disabilities

72. Persons with disabilities face a heightened risk of torture or ill-treatment in a variety of custodial and extra-custodial contexts. Severe abuse, which can take the

[18] Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties (para. 23).

form of physical and sexual violence or systemic neglect, remains rampant against persons with physical, psychosocial or intellectual disabilities in a wide variety of contexts and is often combined with the denial of accessible channels of complaint or communication. Disability can intersect with other vulnerabilities that exacerbate the risk of abuse and disempowerment, such as migration status, socioeconomic background or childhood (A/55/290, para. 12, and A/HRC/28/68, para. 53).

(j) Irregular migrants

73. Throughout the world, migrants in irregular situations face State policies and practices that directly subject them to torture or ill-treatment or expose them to a heightened risk of such abuse. In addition, irregular migrants often face a wide range of intersecting vulnerabilities, stemming from trauma, personal characteristics, societal factors including racism and xenophobia, as well as from the circumstances in which State policies place them by focusing on deterrence, criminalization and discrimination rather than protection, human rights and non-discrimination (A/HRC/37/50).

3. Non-discrimination as a precondition for the eradication of torture

74. While it is impossible to provide an exhaustive list of groups or persons in situations of vulnerability, the examples outlined above illustrate that any form of discrimination, whether through stigmatization, demonization, marginalization, disregard or otherwise, almost invariably entails a significantly increased risk of torture and related ill-treatment. As this mandate has previously stated, "discrimination... may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place" (A/56/156, para. 19). Indeed, not only is the principle of non-discrimination a general principle in the protection of human rights, but the intentional infliction of severe pain and suffering "for any reason based on discrimination of any kind" also constitutes a distinct form of torture.[19] Resisting dehumanizing ideologies that mark certain persons or groups as inferior or unworthy of human rights protections is an indispensable precondition for the prohibition of torture and ill-treatment but also for the fulfilment of the promises enshrined in the Universal Declaration of Human Rights as a whole.

IV. Conclusions

75. **Since the adoption of the Universal Declaration of Human Rights, unprecedented efforts have been made by States, international organizations, civil society and private citizens to eradicate torture and other ill-treatment throughout the world. In particular, the universal recognition of the absolute, non-derogable and peremptory character of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the sophisticated international normative and institutional framework developed to make it a practical reality constitute one of the most significant achievements in human history towards securing respect for the dignity of all human beings without exception or discrimination of any kind and regardless of questions of jurisdiction, territory and nationality.**

76. **Despite this extraordinary achievement, torture and ill-treatment continue to be practised with impunity throughout the world. While the reasons for this sobering reality are many and multilayered, the Special Rapporteur, to the best**

[19] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 1) and Committee against Torture, general comment No. 2 (para. 20).

of his personal judgment and conviction, and informed by broad stakeholder consultations, has identified five areas of primary concern:

(a) Incomplete adoption of the international framework: The international normative and institutional framework for the eradication of torture and ill-treatment still has not been universally ratified. Treaty adherence and acceptance of the individual complaints procedures of the various treaty bodies remain incomplete;

(b) National implementation gap: In many States, a significant gap remains in terms of implementing the international framework at the level of national law and institutions. Shortcomings range from inadequate interpretation of the prohibition of torture and ill-treatment to the absence of preventive safeguards, including effective and independent complaints mechanisms, and from insufficient political will to guarantee the prohibition in practice to inaccessibility and inadequacy of redress and rehabilitation for victims of violations;

(c) Challenges to the prohibition itself: Recently, the prohibition of torture and ill-treatment itself has increasingly come under pressure by States seeking to evade their responsibility for violations and through direct challenges to the substantive scope and the absolute and non-derogable character of the prohibition;

(d) Violent and discriminatory political narratives: Increasingly violent and discriminatory sociopolitical narratives and environments expose "suspect" individuals and communities, irregular migrants, LGBTI persons and other politically, socially, medically or economically marginalized groups to a heightened risk of torture and ill-treatment;

(e) Insufficient protection against non-State actors: In many States, inhabitants enjoy only insufficient protection against violence and abuse inflicted by non-State actors, including organized armed groups, militias, criminal networks, corporate actors and private citizens.

V. Recommendations

77. Recognizing the impossibility of providing detailed guidance on every relevant aspect of the issues raised in this report, the Special Rapporteur herewith reiterates the general recommendations of his mandate[20] and, in the light of the challenges outlined above, particularly emphasizes the following specific recommendations:

(a) Ratification of international instruments: States should ratify, without reservations, all international legal instruments aiming to give effect to the prohibition of torture and ill-treatment, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Covenant on Civil and Political Rights and its Optional Protocols, the Rome Statute of the International Criminal Court and other universal and regional instruments, including those intended to protect persons experiencing specific types of vulnerability, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention on the Rights of Persons with Disabilities;

[20] E/CN.4/2003/68, para. 26.

(b) National legislation, policies and practices: States should ensure that their national legislation meets, as a minimum, the requirements of international law and that their policies and practices across all national systems, procedures and institutions are unequivocally oriented towards the eradication of torture and ill-treatment. Most notably, the Special Rapporteur calls on all States to expressly criminalize torture and other forms of ill-treatment, to impose sanctions commensurate with the gravity of such offences and to abolish any legislation providing for corporal punishment or tolerating domestic violence and chastisement, and strongly encourages the universal abolition of the death penalty;

(c) National and international institutions: In order to ensure the effective prevention of torture and ill-treatment, the investigation of violations and the provision of redress to victims, States should establish fully independent complaints and investigation mechanisms embedded in an independent, impartial and accessible justice system. Independent national, international and non-governmental monitoring mechanisms, including NPMs and NHRIs, the Subcommittee on Prevention of Torture, the Special Rapporteur, civil society and, in cases of armed conflict, ICRC, should be given full access to all places where persons may be deprived of their liberty or otherwise exposed to a real risk of torture or ill-treatment. More generally, States should ensure that civil society and, in particular, human rights defenders can work in an environment free from threats, discrimination and harassment;

(d) Preventive safeguards: States should ensure that preventive safeguards against torture and ill-treatment are put into place throughout all institutions, mechanisms and procedures. In particular, persons deprived of their liberty should be given the opportunity to inform their relatives, to contact a lawyer and to see a physician immediately after arrest and to access independent complaints mechanisms at any time. Inmates, particularly those experiencing specific vulnerabilities, should be protected at all times against violence and abuse by staff and other inmates. Incommunicado detention should be prohibited and criminalized under national law. Open-ended administrative detention without regular independent review should be abolished, as should detention or forced institutionalization based exclusively on a person's disability, legal capacity, migration status or similarly appropriate criteria;

(e) Training: All personnel that may be engaged in operations involving the use of force should be trained with a view to avoiding any excessive use of force. Prosecutors, investigators and other personnel involved in the questioning of suspects should move away from confessions-based investigation and receive specialized training in forensic, non-coercive interviewing. An international, multi-stakeholder process should produce a universal protocol for this purpose (A/71/298). Personnel tasked with medical examinations, the determination of migration status or the judicial adjudication of alleged abuse should be provided with function-specific training in the identification and documentation of the signs of torture and ill-treatment in accordance with the Istanbul Protocol;

(f) Legal review: In the development, procurement or trading of weapons, restraints and other equipment or technologies likely to inflict pain, suffering or humiliation, States should conduct systematic legal reviews with a view to determining whether their use, in some or all circumstances, would violate the prohibition of torture and ill-treatment or any other obligation under international law, or would significantly increase the risk of such violations occurring;

(g) **Reaffirmation of the prohibition: States should unequivocally reaffirm the absolute and non-derogable character of the prohibition of torture and ill-treatment and condemn violations wherever they occur. States should always interpret and apply the prohibition in good faith, consistently with its spirit, object and purpose, and in line with other relevant legal principles, such as human dignity, non-discrimination and non-refoulement. In doing so, States should seek guidance in internationally recognized soft-law standards relevant to the context at hand;**

(h) **Preventing impunity: Whenever there is reasonable ground to believe that someone has been subjected to torture or ill-treatment, States should conduct a prompt and impartial investigation to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation. States should further ensure that commanders and other superiors are held personally accountable for any culpable failure to prevent torture or ill-treatment committed by their subordinates;**

(i) **Non-discrimination: State leaders should discard violent or discriminatory political narratives, policies and practices based on stigmatization, demonization or marginalization of any kind. Particular efforts should be made to prevent torture and ill-treatment against persons experiencing specific vulnerabilities, such as members of social minorities and indigenous groups, irregular migrants or other non-nationals, persons with physical or mental disabilities, illnesses or substance dependence, LGBTI persons and, more generally, children, women and older persons. These efforts should include measures to remedy legal, structural and socioeconomic conditions that may increase exposure to violence and abuse by State officials and non-State actors;**

(j) **Redress and rehabilitation: States should ensure that victims of torture or ill-treatment are protected and provided with the means for as full a rehabilitation as possible, including through the establishment of specialized centres and adequate funding of the United Nations Voluntary Fund for Victims of Torture and relevant national mechanisms and civil society organizations.**